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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CALIFORNIA TRIBAL FAMILIES COALITION,
et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as
Secretary of Health and Human Services, *et al.*,

Defendants.

Case No. 3:20-cv-6018-MMC

**PLAINTIFFS' NOTICE OF
SUPPLEMENTARY MATERIAL**

1 Pursuant to Local Rule 7-3(d), Plaintiffs file this Notice of Supplemental Material to
 2 update the Court on facts relevant to Defendants' Motion for Voluntary Remand Without Vacatur,
 3 ECF No. 102 ("Defs.' Mot.").

4 On June 21, 2022, Defendant Department of Health and Human Services ("HHS") issued
 5 its Spring 2022 Regulatory Agenda. Pursuant to Executive Order 12,866 section 4(b), an agency's
 6 Regulatory Agenda must include "all regulations under development or review." 58 Fed. Reg.
 7 51,735, 51,738 (Sept. 30, 1993). Actions expected to be taken within 12 months are listed as
 8 "Active," and actions expected more than 12 months out are listed as "Long-Term Actions." *See*
 9 Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, *About the Unified Agenda*,
 10 https://www.reginfo.gov/public/jsp/eAgenda/UA_About.myjsp (last accessed July 6, 2022).
 11 HHS's Spring 2022 Regulatory Agenda is attached as Attachment A.

12 Defendants have previously asserted that they "are seeking to adopt a new rule due to a
 13 change in administration," Defs.' Reply in Supp. of Mot. for Voluntary Remand Without Vacatur,
 14 ECF No. 109, at 1, and have "already begun to obtain the necessary departmental clearance from
 15 agency leadership to move forward with the rulemaking process," Defs.' Mot. at 2. However, the
 16 Spring 2022 Regulatory Agenda does not include any rulemaking related to the Adoption and
 17 Foster Care Analysis and Reporting System ("AFCARS"). *See* Attachment A. This means that no
 18 amendment to the challenged 2020 Final Rule is "under development." 58 Fed. Reg. at 51,738.
 19 Indeed, even the "Long-Term Actions" list does not contain any such rule, meaning that
 20 Defendants do not expect to issue a proposed rule or take any other action on the subject in the
 21 next two years, and consequently do not intend to issue a final rule in the current presidential term.

22 Accordingly, and for the reasons stated in Plaintiffs' Opposition to Defendants' Motion for
 23 Remand Without Vacatur, ECF No. 104, the equities do not support Defendants' request to
 24 remand the 2020 Final Rule so that Defendants can consider amending it, and the 2020 Final Rule
 25 should be remanded *with* vacatur.

1 Dated: July 6, 2022

Respectfully submitted,

2 By: /s/ Jeffrey B. Dubner
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